

IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

Frank Betz Associates, Inc.,)	
)	
Plaintiff,)	
)	
vs.)	No.:3:12-cv-00152
)	Judge Campbell
Builders Mutual Insurance Company,)	
)	
Defendant.)	

MOTION FOR STAY OF PROCEEDINGS, OR ALTERNATIVELY, TO PLACE CASE
ON ADMINISTRATIVE HOLD OR INACTIVE STATUS

Comes the Defendant, Builder Mutual Insurance Company (“Builders”), and requests that this Honorable Court stay the proceedings herein, or alternatively, to this place case on administrative hold or inactive status until the post-trial motions and/or the appeals in the underlying action out of which this declaratory judgment proceeding arises have been concluded. More particularly, Builders would that in the underlying action of *Frank Betz Associates, Inc. v. Signature Homes, Inc., et. al*, No. 3:06-cv-00911, the defendants have filed an extensive post-trial Motion for Judgment as a Matter of Law, or Alternatively, for New Trial, setting forth multiple grounds therefor. The grounds for the motion include the invalidity and unenforceability of the copyrights at issue, the non-liability of the defendants based upon improper jury instructions and improperly excluded evidence, and failure of the plaintiff to present damages proof in accord with the allocation rules set forth in *Thoroughbred Software International, Inc. v. Dice Corporation*, 488 F.3d 352 (6th Cir. 2007).

Builders would show that consistent with the nonobligatory nature of the remedy, a district court is authorized, in the sound exercise of its discretion, to stay an action seeking a declaratory judgment. *Wilton v. Seven Falls Co.*, 515 U.S. 277, 288 (1995); 1995 U.S. LEXIS 3908. In view

of the unconcluded issues in the underlying action, that involve the very merits of the judgment upon which plaintiff seeks a declaration of rights to insurance proceeds from Builders, any declaration of rights made before the final determination of the validity of the underlying judgment would be necessarily premature. For the convenience of the Court, a copy of the Defendants' Brief in Support of Motion for Judgment as a Matter of Law, or Alternatively, for New Trial, as Exhibit A hereto.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this the 30th day of March, 2012, a copy of the foregoing Motion was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's electronic filing system.

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